IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	**No. 66 C 1459**
	)	**Judge Aspen**
CHICAGO HOUSING AUTHORITY	)	
	)	
	)	
Defendant.	)	

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT CHICAGO HOUSING AUTHORITY'S MOTION TO REASSIGN A COMPLAINT FILED BY SHAHSHAK BEN LEVI, AND TO DISMISS THAT COMPLAINT, WITHOUT PREJUDICE TO BEN LEVI'S RIGHT TO SEEK LEAVE TO INTERVENE IN THIS CASE

In its Motion To Reassign A Complaint Filed By Shahshak Ben Levi, And To Dismiss That Complaint, Without Prejudice To Ben Levi's Right To Seek Leave to Intervene In This Case ("Motion"), the Chicago Housing Authority ("CHA") pressed two points: 1) that Ben Levi v. Daley, et al., 04 C. 1169 ("Ben Levi") should be reassigned to this court; and 2) that Ben Levi should be dismissed without prejudice to Mr. Ben Levi's right to seek leave to intervene in Gautreaux. In support of those respective arguments, the CHA relied on Local Rule 40.4 of the Rules for the United States District Court for the Northern District of Illinois ("LR 40.4") and on Concerned Citizens of ABLA v. CHA, 99 C 4959 ("ABLA"), and the authorities cited therein.[1] Mr. Ben Levi

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[1] The CHA also predicated its second argument on cases holding that a Receiver could not be sued without leave of the court that appointed him. Motion ¶ 12. In his "Brief In Response to Defendant's Motion to reassign complaint filed by me (Ben Levi), and to dismiss complaint without prejudice to my rights to seek to intervene in this case" ("Response"), Mr. Ben Levi notes that this Court's order appointing a receiver permits any party to the case to file claims against the receiver. Response at 1. But Mr. Ben Levi is not a party to Gautreaux. Moreover, the issue is not whether Mr. Ben Levi should be able to seek relief that would restrict this Court's receiver, but whether he may do so in a separate proceeding.

does not respond to those arguments at all. Indeed, he does not offer any explanation either as to why LR 40.4 does not compel reassignment of Ben Levi to be heard with Gautreaux, or as to why ABLA and the authorities cited therein do not compel dismissal of Ben Levi.

To the extent that Mr. Ben Levi speaks to the CHA's arguments, his Response confirms that the Motion should be granted. In particular, Mr. Ben Levi emphasizes that he "is seeking to amplify the same goals as Gautreaux...." Response at 2[2]; see id. at 3 (his position "is in harmony with Gautreaux"); id. at 4 ("Our argument is also the same as this Court...."); id. at 5 ("There is no differences or collateral attack on the Gautreaux's procedural mechanics invoked by this Court and the remedies sought by the Plaintiff. Plaintiff is trying to achieve the same goals as this Court"); id. at 7 ("Plaintiff is trying to achieve the same goals as this Court"). That Mr. Ben Levi sees his goals in filing his suit as consistent with the remedial orders in Gautreaux confirms that the two cases involve substantial, overlapping issues. Accordingly, the parties and the court would be served by the efficiencies inherent in resolving only one action, rather than two. Moreover, if Mr. Ben Levi is allowed to proceed in a separate lawsuit, he may ***not*** obtain the same relief that this Court orders in Gautreaux. Thus, proceeding in two separate cases would not only be inefficient, it would put the CHA at risk of inconsistent orders.

Mr. Ben Levi suggests that, if his case is reassigned to Gautreaux, he is somehow at risk of being denied relief to which he is entitled. See Response at 4. But consolidation with Gautreaux will not mean Mr. Ben Levi cannot obtain relief; only that any relief he does obtain will be consistent with that afforded in Gautreax. Indeed, the only way to insure that any relief afforded Mr. Ben Levi is consistent with remedial orders entered in Gautreaux is to join the two suits in one proceeding.

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[2] Attached as Exhibit A is a paginated copy of the Response.

Mr. Ben Levi relies on arguments that would present themselves, if at all, only after this Court grants the Motion and Mr. Ben Levi requests leave to intervene in Gautreaux. Thus, at this stage of the litigation, the CHA's motion does not present questions as to: 1) whether there is a case or controversy between Mr. Ben Levi and any of the defendants including whether he has standing to sue, or whether his claims are moot or ripe, see id. at 2, 6-8; 2) whether the City of Chicago has violated any agreement with HUD, see Response at 2; 3) whether any motion to intervene that Mr. Ben Levi might later bring should be granted or denied, see id. at 3; 4) preemption of any state or municipal rule on the basis of any federal law on which Mr. Ben Levi relies, see id. at 3-4; 5) the proper interpretation of any of the constitutional or statutory provisions on which Mr. Ben Levi relies, see id. at 7, 10-12; 6) whether any of the defendants has violated any of the constitutional or statutory provisions on which Mr. Ben Levi relies, see id. at 2, 13-17; 7) whether Congress had authority to enact any of the statutes on which Mr. Ben Levi relies, see id. at 10, 13-14; 8) whether any of the statutes on which Mr. Ben Levi relies are unconstitutionally vague, see id. at 12-13; or 9) the constitutionality of any drug testing provision that might someday be used to decide whether applicants may reside in Taylor, see id. at 16-17.

Since Mr. Ben Levi has presented no argument for denying the Motion and, since he concedes that his lawsuit seeks to further the goals of the plaintiffs in Gautreaux, the CHA requests that: 1) this court order that Ben Levi be reassigned to this court; and; 2) that this court dismiss the suit without prejudice to Ben Levi's right to seek to intervene in Gautreaux.

Dated: June 24, 2004

Respectfully submitted,

By: _____
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United States District Court
Northern District of Illinois

DOROTHY GAUTREUAX, et al.,	)
	)No. 66 C 1459
Plaintiffs,	)Honorable
	)Judge Aspen
v.	)
	)
CHICAGO HOUSING AUTHORITY et al.,	)
	)
Defendant,	)

Brief in Response to Defendant's Motion to reassign complaint filed by me (Ben Levi), and to dismiss complaint without prejudice to my rights to seek leave to intervene in this case.

In the receivership order signed by Honorable Judge Aspen at 9. it states: "Nothing in this order shall (i) preclude or restrict the Receiver or **any party** hereto from asserting any claims against the receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or anyother party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such a claim." pg.7 Entered **August 14, 1987.** Defendant argues that **SEC v. Wencke**, 622 F.2d 163, 1369-70 (9th Cir. 1980) precludes plaintiff from filing suit against other entities. However defendant failed to acknowedge and disclose the

EXHIBIT A

fact, that the 9th Circuit also stated *at 1372* that:"district court's broad power to fashion ancillary relief could be exercised only where necessary. We believe that it is not necessary in this case to effectuate Gautreax, because plaintiff is seeking to amplify the same goals as Gautreaux by ending desegregation. **SEC v. Hickey**, No. 01-17027, at 3507 and 3522 (9th Cir. 2003). The Supreme Court has observed that the doctrines of standing and mootness address different aspects of a federal court's jurisdiction to hear a case. As Justice Ginsburg explained in **Friends of the Earth, Inc. v. Laidlaw Environmental Services**, 528 U.S. 167, 145L.Ed.2d 610, 120 S. Ct. 693(2000), standing ensures that federal courts devote their time and attention **"to those disputes in which the parties have a concrete stake,"** whereas mootness often comes into play after a case has been litigated for a number of years, but no longer concerns a live dispute. Id. at 191-92 . **While mixed income is one of the greatest ideas to ever come alone to resolve segregation problems. The City has violated the agreement between them and HUD in accordance to 42 U.S.C. 471 et seq. And also 42 U.S.C. 4638 TRANSFER OF SURPLUS PROPERTY:"** The conveyance was suppose to be subject to such terms and condition as the Administrator determines necessary to protect the interests of the United States…" Discriminatory conveyance of land is not in the interest of the United States. Nor is it in accordance to the Uniform Relocation Assistance Act. These violations are of *general public interest*. (Emphasis added). Public Housing transitioned to Housing choice vouchered members should not be subject to living alone an un-eraseable line alone racial and ecologocal barriers. Living on off-site public housing redeveloped property does not compensate for living on-site in a mixed-income block. **Buchannan v. Warley**, 245 U.S. 60, 38 S.Ct. 16 (1917); **Far Share Housing Center v. Cherry Hill**, 173 N.J. 393, 410 (2002). Living on the Eastside of State Street offsite is not fulfilling the city's

constitution obligation to include a public housing component on the Westside of State Street, which is what carries the day according to Cherry Hill. In support of our position of working in harmony with Gautreaux, I would like to present a case somewhat similar to our case presently before this court in content. In evaluating whether there already exists a party who will adequately represent the proposed intervenors' interests, the Court must consider three factors: (1) whether the interests of a present party to the suit are such that it will undoubtedly make all of the intervenors' arguments; (2) whether the present party is able and willing to make such arguments; and (3) whether the intervenors would offer any necessary element to the proceedings that the other parties would neglect. See **United States v. Stringfellow**, 783 F.2d 821, 827 (9th Cir. 1986). Plaintiff brings his individual constitutional right-of-return and housing choice to this court which has been neglected by the receiver and defendants. Being put on a waiting list the court in **Starrett City** saw this as having a racial impact and discriminatory towards blacks.

Dehoyos v. Allstate Corp., *345 F. 3d 290, 2003 U.S. App. LEXIS 18172 (5th Cir. Tex., 2003).* A case in which an insurer violated law by using racially biased "credit scoring" to sell more expensive policies to nonwhite customers than thosed aimed at white customers. This case was raised on violating 42 U.S.C. 1981, 1982, and the Fair Housing Act. Allstate invoked The McCarran-Fergusan Act to preempt claims against them. But, the federal courts disagreed with them. The Insurer saw the federal court as interfering with them setting standards for state insurance prices citing the principles of ***Humana Inc. v. Forsyth***, 525 U.S. 299 (1999). They believed that the Federal Court would impair their policy making decision within the state. The Insurer's focus on *Humana's* use of the phrase "or interfere with a State's administrative regime" ignored that case's

rejection of the field preemption approach as well as its holding that "federal and state law can concurrently affect the same issues and further the same goal as long as the federal law does not *frustrate* the state's *declared* policy," the court posits. " 'Interference,' then, is not synonymous with 'a presence in a regulatory field,' "the court stresses." Instead, the issue is whether the state and federal regulatory goals "are in harmony." The insurer could not show MFA preemption by merely pointing to the "implied goal of allowing the states to pursue their pricing regulatory goals in isolation." Our arguement is also the same as this Court when the courts stated "CHA is duty-bound to vigorously pursue desegregation opportunities. *see* **Dorothy Gautreaux**, 304 F.Supp. at 741 (judgement order Article VIII) . also when the court states ("Difficulty in attaining racially integrated public housing shall not be further condoned... The CHA must have only one concern, housing in compliance with the repeated orders of the Aspen Court.") Aspen added. **Dorthy Gautreaux** v. **Chicago Housing Authority** No. 66C1459 *Memorandum Of Opinion and Order.* The Aspen Court stipulated that Congress created the HOPE VI program in 1992 with the goal of "empower[ing the] residents of severely distressed and obsolete public housing." **S. Rep. 102-356,at 70 (1992)**. It intended to accomplish this via a three-part plan: (1) eliminating and (in some form) replacing dilapidated public housing structures, (2) providiing residents of those structures with the skills necessary to achieve self-sufficiency, and (3) instilling a sense of community activism in residents of the blighted areas. *see., id.* I took note how the issue that was before the court at that time was (1) is what was at question. Plaintiff would be denied achieving the goals of (2) and (3) if this case was dismissed. Because the ultimate goal of HOPE VI according to Congress was to give the residents more of a voice and responsibilty in upgrading their own lives through self-sufficiency *with also*

the tools being provided. If Plaintiff is not allowed to exercise his fundamental right of freedom of speech, fair housing, and civil rights then the HOPE VI is nothing more than a papered guarantee which means nothing and the courts ruling would not be in the spirit of the Supreme Law the U.S. Constitution. Defendant's cannot seek to create public housing without federal regulatory oversight protecting the residents rights. Plaintiff expressed fundamental right does not frustrate or "impair" the guidelines of this court but **amplifies the Gautreaux** by holding those would be violators of his rights to the federal guidelines with the Gautreaux taken into account in harmony with the Plaintiff. The dictionary definition of "impair" is "[t]o *weaken,* to *make worse,* to *lessen in power, diminish,* or *relax,* or *otherwise affect in an injurious manner."* Black's Law Dictionary 752 (6th ed. 1990). Plaintiff's complaint does not weaken the Gautreaux in anyway. Upholding public housing residents to a higher standard than others in similar situated conditions is discriminatory and disparate within itself. The filing of this case should be regarded as a factor *in favor*(not against) Gautreaux. There is no differences or collateral attack on the Gautreaux's *procedural mechanics invoked* by this Court and the *remedies being sought* by the Plaintiff. Plaintiff is trying to achieve the same goals as this Court. Plaintiff points out that Congress created HOPE VI: for the empowerment of residents of severely distressed and obsolete public housing.... For too long, these areas have been the victim of either gross neglect by government or the victim of large bureaucracies that have wasted limited resources in an attempt to impose top down strategies to do good to the residents of these areas. Neither approach has worked....[HOPE VI] is a program that call upon both the residents and political leaders of America's large cities to join together to develop strategies that will transform these distressed areas into productive residential and commercial

centers. **S. Rep. No. 102-356, 102d Cong., 2d Sess. p.40 (1992)**. The fact that CHA Plan has not ben submitted to or approved by HUD does not mean that the injury alleged is not imminent or has not already occurred. Furthermore, in other cases regarding public housing, courts have held that HUD approval is not a prerequisite to the determination of ripeness. For example, in **Jackson v. Okloosa County, Fla.**, 21 F.3d 1531 (11th Cir. 1994), the court found that a Fair Housing Act ("FHA") claim was ripe, even though HUD had not yet given final approval for site selection. The court noted that the plaintiffs had alleged that the process of site selection itself was flawed, because all of the sites ranked and submitted for approval were in racially impacted areas. The court found that if these allegations were true, the site selection process would have a segregative result in violation of the law regardless of HUD's decision. **Jackson**, 21 F. 3d at 1541 & n.15. So too in this case. Plaintiff is stating that the Tenant Selection Plan and Site Specific Criterion is holding public housing residents transitioned to housing choice vouchered to a higher standard than other renters and people similar situated. Therefore this would be denying plaintiff a right-of-return and a right to live in a mixed-income community after redevelopment in accordance to the Gautreaux guidelines. That is to say, that Defendants has already violated provisions in the law, and that the Defendants Plan threatens imminent injury to federal and state law. I believe as being the Plaintiff that I do not have to wait for the Plan to be submitted to HUD for approval in order to bring this suit. ***See Jackson***, 21 F. 3d at 1541 n.15 ("HUD decisions need not be final where an injury is imminent."); *accord* **Sierra Club v. Morton**, 514 F. 2d 856, 868-69 n.20, 880-82 (D.C. Cir. 1975) (holding that claims that plans for development of coal resources had proceeded far enough to require environmental impact statement were ripe depsite lack of formal , "final" agency

action), *reversed on other grounds*, 427 U.S. 390, 96 S. Ct. 2718 (1976) (not questioning ripeness determination of lower court). Plaintiff further states in complaint that "administrative events" have already taken place that are in furtherance of the CHA Plan which violates his regulatory and Constitutional Rights. **Despite** the fact that since 1993 the government through the HOPE IV program has given **$4 billion** in grants for the revitalization of **165** developments in **98** cities, with over **$623 million** to Chicago alone, yet, there has not been one public housing replacement unit built on the present land in which Robert Taylor Homes presently/once resided. **42 U.S.C. 4625(A)(2):** Provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion. The City has done nothing to minimize adverse impact or projected advancement and completion in violation of Plaintiff's right. Plaintiff is trying to achieve the same goals as this Court. Congress does not write statutes in a vacuum. For one thing, it is guided by prior judicial decisions, and so it is well-recognized that "the normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific." **Midlantic Nat'l Bank v. N.J. Dep't of E.P., 474 U.S. 494, 501, 88 L. Ed. 2d 859, 106 S. Ct. 755 (1986)** (internal citation omitted). *See also* **Davis v. Michigan dep't of Treasury, 489 U.S. 803, 813, 103 L. Ed. 2d 891, 109 S. ct. 1500 (1989)** ("When Congress codifies a judicially defined concept, it is presumed, absent an express statement to the contrary, that Congress intended to adopt the interpretation placed on that concept by the courts."). It is well-established that the existence of a case and *controversy* is a prerequisite for the exercise of federal judicial power under **Article III**. One important element of the "case" or "controversy" is satisfying the

ripeness doctrine, (emphasis added) *see* **Reno v. Catholic Soc. Servs., Inc. , 509 U.S. 43, 57 n.18, 125 L. Ed. 2d 38, 113 S. Ct. 2485 (1993)** (stating that the doctrine derives from both Article III and from prudential reasons for refusing to exercise jurisdiction), which determines when a party may go to court. Ripeness is, essentially, a question of timing. *See* **Reg'l Rail Reorganization Act Cases**, 419 U.S. 102, 140, 42 L. Ed. 2d 320, 95 S. Ct. 335 (1974). **Caulder** v. **Durham Housing Authority**, 433 F.2d 998, 1003 (4th Cir. 1970)("Not only is [the public housing tenant], by definition, one of a class who cannot afford acceptable housing so that he is "condemned to suffer grievous loss,' but should it be subsequently determined that his eviction was improper the wrong cannot be speedily made right because the demand for low-cost public housing and the likelihood that the space from which he was evicted will be occupied by other.") Compare **Shapiro v. Thompson**, supra, 394 U.S. at 627, 89 S.Ct. at 1327, striking down one-year residency requirement for welfare eligibility as violation of equal protection, and noting that the benefits in question are 'the very means to subsist-food, shelter, and other necessities of life,' with **Kirk v. Board of Regents**, etc., 273 Cal.App.2d 430, 439-440, 78 Cal.Rptr. 260, 266-267 (1969), appeal dismissed, 396 U.S. 554 (1970), upholding one-year residency requirement for tuition-free graduate education at state university, and distinguishing Shapiro on the ground that it 'involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children.'

These cases and those cited in n. 17, supra, suggest that whether or not there is a constitutional 'right' to subsistence (as to which see n. 14, supra), deprivations of benefits necessary for subsistence will receive closer constitutional scrutiny, under both the Due Process and Equal Protection Clauses, than will

deprivations of less essential forms of governmental entitlements. Putting Plaintiff on a waiting list in contrast to following the contract for right-of-return and the Memorandum of Understanding between Mayor Daley and HUD's Secretary of Public and Indian Housing Harold Lucas definitely runs afoul to plaintiff's constitutional guarantees. This is an agreement the receiver and defendants both have knowledge of but fails to address. The use of excessively burdensome qualification standards for the purpose, or with the effect, of denying housing to minority applicants, has been held by the court to be illegal under the FHA. The rental agents emphasized the security deposit to black applicants, but not to whites, and required credit checks for black applicants, but not for whites. **Seniors Civil Liberties v. Kemp**, 995 F.2d 1030 (11th Cir.1992); **Reeves v. Rose**, 108 F. Supp. 2d 720 (E.D.Michigan. 2000). For this Court recognized long ago that, whatever else they may have encompassed, the badges and incidents of slavery - its "burdens and disabilities" - included restraints upon "those fundamental rights which are the essence of civil freedom, namely, the same right . . . to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens." **Civil Rights Cases**, 109 U.S. 3, 22 . 78 Honorable **JUSTICE STEWART** delivering the opinion of the Court in **JONES v. MAYER CO.**, 392 U.S. 409 (1968), said: **"Just as the Black Codes, enacted after the Civil [392 U.S. 409, 442] War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes.** And when racial discrimination herds men[392 U.S. 409, 443] into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery. Negro citizens, North and South, who saw in the Thirteenth Amendment a promise of freedom - freedom to "go and come at pleasure" and to "buy and sell

when they please" - would be left with "a mere paper guarantee" if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep. Representative Wilson of Iowa was the floor manager in the House for the Civil Rights Act of 1866. In urging that Congress had ample authority to pass the pending bill, he recalled the celebrated words of Chief Justice Marshall in **McCulloch v. Maryland, 4 Wheat. 316, 421:**

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

"The end is legitimate," the Congressman said, "because it is defined by the Constitution itself. The end is the [392 U.S. 409, 444] maintenance of freedom . . . . A man who enjoys the civil rights mentioned in this bill cannot be reduced to slavery. . . . This settles the appropriateness of this measure, and that settles its constitutionality."

We agree. The Thirteenth Amendment authorizes Congress not only to outlaw all forms of slavery and involuntary servitude but also to eradicate the last vestiges and incidents of a society half slave and half free, by securing to all citizens, of every race and color, "the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens." 109 U.S., at 22 . Cf. id., at 35 (dissenting opinion).

In Hodges v. United States, 203 U.S. 1 , a group of white men had terrorized several Negroes to prevent them from working in a [392 U.S. 409, 442] sawmill. The terrorizers were convicted under 18 U.S.C. 241 (then Revised Statutes 5508) of conspiring to prevent the Negroes from exercising the right to contract for employment, a right secured by 42 U.S.C. 1981 "shall have the same right . . . to make and enforce contracts, to sue, be parties, **give evidence,** and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens . . . ." (Emphasis added.)

On January 5, 1866, Senator Trumbull introduced the bill he had in mind - the bill which later became the Civil Rights Act of 1866. He described its objectives in terms "that belie any attempt to read it narrowly":

"Mr. President, I regard the bill to which the attention of the Senate is now called as the most important measure that has been under its consideration since the adoption of the constitutional amendment abolishing slavery. That amendment declared that all persons in the United States should be free. This measure is intended to give effect to that declaration and secure to all persons within the United States practical freedom. There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be [392 U.S. 409, 432] affected by them have some means of availing themselves of their

benefits." Of course, **Senator Trumbull's bill would, as he pointed out, "destroy all [the] discriminations" embodied in the Black Codes, but it would do more: It would affirmatively secure for all men, whatever their race or color, what the Senator called the "great fundamental rights":**

"the right to acquire property, the right to go and come at pleasure, the right to enforce rights

in the courts, to make contracts, and to inherit and dispose of property." As to those basic civil rights, the Senator said, **the bill would "break down all discrimination between black men and white men." [392 U.S. 409, 433]That the bill would indeed have so sweeping an effect was seen as its great virtue by its friends and as its great danger by its enemies but was disputed by none.** Opponents of the bill charged that it would not only regulate state laws **but would directly "determine the persons who [would] enjoy . . .property within the States," threatening the ability of white citizens "to determine who [would] be members of [their] communit[ies] . . . ."** The bill's advocates did not deny the accuracy of those characterizations. Instead, they defended the propriety of employing federal authority to deal with "the white man . . . **[who] would invoke the power of local prejudice" against the Negro. 59 *****

Thus, **when the Senate passed the Civil Rights Act on February 2, 1866, it did so fully *aware of the breadth of the measure it had approved*.**

In the House, as in the Senate, much was said about eliminating the infamous Black Codes. But, like the Senate, the House was moved by a larger objective - that of giving real content to the freedom guaranteed by the Thirteenth Amendment. Representative Thayer of Pennsylvania put it this way:

"[W]hen I voted for the amendment to abolish slavery . . . I did not suppose that I was offering [392 U.S. 409, 434] . . . a mere paper guarantee. And when I voted for the second section of the amendment, I felt . . . certain that I had . . . given to Congress ability to protect . . . the rights which the first section gave . . . ." So as in our present case before this court. **Holley v. Crank**, 258 F.3d 1127(9th Cir. 2001), *cert. granted sub nom.* **Meyer** v. **Holley**, 122 S. Ct. 1959 (2002). There is nothing vague about this provision. A statute is unconstitutionally vague if it does not

give a "person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." **Grayned v. City of Rockford**, 408 U.S. 104, 108 (1972); **United States v. Bird**, 124 F.3d 667, 683 (5th Cir. 1997). A civil statute like the Fair Housing Act will be invalidated for vagueness only "where 'the exaction of obedience to a rule or standard . . . was so vague and indefinite as really to be no rule or standard at all . . .'" **Boutilier v. INS**, 387 U.S. 118, 123 (1967), quoting **Small Co. v. American Sugar Refining Co.**, 267 U.S. 233, 239 (1925). Section 5 of the Fourteenth Amendment empowers Congress to enact "appropriate legislation" to "enforce" the Equal Protection Clause. As the Supreme Court explained over a hundred years ago:

> Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

Ex parte Virginia, 100 U.S. 339, 345-46 (1879). A statute is thus "appropriate legislation" to enforce the Equal Protection Clause if the statute "may be regarded as an enactment to enforce the Equal Protection Clause, [if] it is 'plainly adapted to that end' and [if] it is not prohibited by but is consistent with 'the letter and spirit of the constitution.'" **Katzenbach v. Morgan**, 384 U.S. 641, 651 (1966); **Abril v. Virginia**, 145 F.3d 182, 187 (4th Cir. 1998). The Department of Justice memorandum, which was later inserted into the record during floor debate in the Senate (**114 Cong. Rec. 2534-2537 (1968)**), cited data on the size of the housing industry ($27.6 billion in 1965 - more than the agriculture, forestry and fisheries

industries combined), the "large portion of housing materials * * * shipped in interstate commerce," the significance of interstate mortgage lending, and the movement of American families across state lines (1 family in 30 each year). The memorandum found that housing discrimination restricted the number of new homes built and thus affected interstate commerce by limiting the interstate movement of materials and financing; and that discrimination inhibited the interstate movement of minority families and thus "the efficient allocation of labor among the interstate components of the economy." **id. at 2536.**

The Subcommittee also heard testimony from legal scholars and fair housing advocates that the Act was authorized by the Commerce Clause. **1967 Senate Hearings at 130-32** (statement of Rev. Robert F. Drinan, Dean, Boston College Law School); 132-33 (statement of Jefferson B. Fordham, Dean, University of Pennsylvania Law School); 162-64 (statement of Louis H. Pollak, Dean, Yale Law School); 228-31, 249-69 (statement of Sol Rabkin, National Committee Against Discrimination in Housing (NCDH)). A legal memorandum, submitted to the Subcommittee by NCDH, and concluding that the Act was authorized by the Commerce Clause and the Fourteenth Amendment, was later inserted into the record during floor debate in the Senate. **114 Cong. Rec. 2699-2703 (1968).**

See 1967 Senate Hearings at 102 (statement of Roy Wilkins, Executive Director, NAACP); 366-67 (statement of Marvin Braiterman, Counsel for Commission on Social Justice of Reformed Judaism in America); 431-32 (statement of James H. Harvey, American Friends Service Committee); 487 (statement of William J. Levitt).

In **Rucker** v. **Davis**, 237 F.3d at 1125. The en banc court of appeals held that there was a due process violation for this reason. "[The statute] would permit tenants to be deprived of their property interest without any relationship to individual wrongdoing." A public housing authority must

follow regulations promulgated by HUD. **Chicago Housing Tenant's Organization, Inc.**, v. **Chicago Housing Authority**, 512 F.2d 19 (1975). In **HUD** v. **Hanson**, 1992 WL 613659 (H.U.D.A.L.J. 1992)(Consent Order), the Gordon H. Mansfield, HUD's Assistant Secretary for Fair Housing and Equal Opportunity, filed a complaint against a developer. HUD clearly construes the Fair Housing Act to cover developers. **Section 1581 of Title 18:** Makes it unlawful to hold a person in " debt servitude, " or peonage, which is closely related to involuntary servitude. Having a place to stay as an involuntary employed person is a human right. Working 30 hrs. in order to meet public housing requirement is involuntary servitude. It makes it unlawful to hold a person in a condition of slavery, that is, a condition of compulsory service of labor against his will. A Section 1584 conviction requires that the victim be held against his will by actual force, threats of force, or threats of legal coercion. **It also prohibits compelling a person to work against his will by creating a " climate of fear" through the use of force, the threat of force, or the threat of legal coercions, which is sufficient to compel service against a person's will.** The offense is punishable by a range of imprisonment up to a term of ten years, depending upon the circumstances of the crime. In support of the position that the statute is repugnant to the 14th Amendment, the plaintiff advance many propositions that meet the entire approval. The court said in **Allgeyer** v. **Louisiana**, 165 U.S. 578, 589 , 41 S. L. ed. 832, 835, 17 Sup. Ct. Rep. 427, 431, namely, that the liberty mentioned in the 14th Amendment ' means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that

purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.'

42 U.SC. § 5309: the *Housing and Community Development Act of 1974* "Makes it unlawful to discriminate on the basis of race, color religion, national origin, sex, age and disability in federally-assisted community development activities." **United States** v. **Morrison**, 529 U.S. 598, 620 (2000). The Site specific criterion and tenant selection plan discriminates based on credit history background check qualifications. **15 U.S.C. 1691 § 701(a):** It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction- (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has capacity to contract; (2) because all or part of the applicant's income derives from any public assistance program; or (3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. In **Chandler v. Miller**, 117 S. Ct. 1295, 1305 (1997). The much-quoted language of Ginsburg's opinion states that "[h]owever well-meant, the candidate drug test Georgia has devised diminishes personal privacy for a symbol's sake." Id. **Chandler**, 117 S. Ct. at 1305. ("[W]here, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search, no matter how conveniently arranged."). **Special Needs became a judicial standard for suspicionless drugtesting and warrantless searches**, which put constituents on the watch for would be violators of the 4th Amendment. This would allow the defendants to hold housing choice vouchered candidates to a higher standard than regular renters and other people similar situated. **Schmerber v. California**, 384 U.S. 757, 767-68 (1966) (holding that a blood test is a search of a person within the meaning of the Fourth Amendment). **JOHN GILLIOM, SURVEILLANCE,**

PRIVACY, AND THE LAW: EMPLOYEE DRUG TESTING AND THE POLITICS OF SOCIAL CONTROL 1 (1994). There are two dimensions to the privacy interests involved in drug testing. **GILLIOM**, supra note 4, at 90. Gilliom refers to the first dimension as "dignity and visual privacy", or the idea that "[e]xcreting body fluids and body wastes is one of the most personal and private human functions'". Id. at 91 (quoting **McDonnel v. Hunter**, 612 F. Supp. 1122, 1127 (S.D. Iowa 1985), aff'd as modified by, 809 F.2d 1302 (8th Cir. 1987)). This was certainly a concern of the appellate court in Von Raab:

There are few activities in our society more personal or private than the passing of urine. Most people describe it by euphemism if they talk about it at all. **It is a function traditionally performed without public observation; indeed, its performance in public is generally prohibited by law as well as social custom**. Id. at 92 (quoting **National Treasury Employees Union v. Von Raab**, 816 F.2d 170, 175 (1987)). The second dimension is what Gilliom calls "informational privacy," or the problem that the fluids obtained for a drug test can reveal confidential medical information. Id. This information may disclose, for example, the presence of certain prescription medication, or that a person is pregnant. **Id. at 93**. Plaintiff is being harassed and intimidated by the fact that these defendants' are targetting him as an extremely low-income African-American public housing leaseholder for displacement. **LeBlanc - Sternberg v. Fletcher**, 67 F.3d. 412, 427 (2d Cir. 1995), cert denied, 518 U.S. 1017 (1996); **Huntington Branch, NAACP v. Town of Huntington**, 844 F.2d at 938: In these cases the Courts have applied the Fair Housing Act (FHA hereinafter) to municipal actions blocking housing projects that are likely to include classes of people protected by the FHA. So as in this case with Housing Choice Voucher. The FHA is construed generously to implement its broad goal of ending discrimination. See, e.g., **Trafficante v. Metropolitan Life Ins. CO**, 409 U.S. 205,

Dated this 16th day of
June, 2004

By: Shahshak B. Levi
Shahshak Ben Levi
Pro Se'

for each building in the scattered site program (except buildings developed pursuant to a turnkey development) as reflected on the original development budget(s) therefor submitted by the Receiver and approved by HUD, the fee for such building being payable upon the completion thereof as determined in accordance with Paragraph 5 hereof The Court will set a reasonable fee with respect to turnkey developments. The Court hereby determines that included in the category of expenditures for which the Receiver shall be entitled to reimbursement are all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) reasonably incurred or sustained by the Receiver by reason of the performance by the Receiver of its duties pursuant to the provisions hereof to the extent said costs expenses and liabilities are not covered by the insurance described in Paragraph 2(b)(iii) above.

9. Nothing in this Order shall (i) preclude or restrict the Receiver or any party hereto from asserting any claims against the Receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or any other party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such claim, (ii) obligate HUD to furnish funds to the Receiver in addition to any funds which HUD would otherwise be obligated to provide

to CHA by virtue of any previous order of this Court or otherwise, or (iii) constitute a determination of the amount of funds which HUD is obligated to furnish by virtue of such previous orders or otherwise.

10. The Receiver is hereby excused from complying with 9(b) of the Civil Rules of the United States District Court the Northern District of Illinois

11. The effective date of this Order (the "Effective Date") shall be the date upon which the Receiver has filed with this Court and served upon the parties hereto a notice signifying that the Receiver is satisfied that there is in force the insurance coverage referred to in Paragraph 2(b)(iii) above.

12. Except as and to the extent specifically provided in this Order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect The Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information or material changes in conditions existing at the time of this order or any other matter.

ENTER:

United States District Judge

August 14, 1987

CHANGE.
CHICAGO HOUSING AUTHORITY

ATTENTION CHA RESIDENTS:

PUBLIC COMMENT PERIOD FOR THE DRAFT MINIMUM TENANT SELECTION PLAN FOR MIXED-INCOME/MIXED-FINANCE COMMUNITIES

June 10, 2004 – July 9, 2004

The Chicago Housing Authority (CHA) developed a Draft Minimum Tenant Selection Plan (MTSP) for Mixed-Income/Mixed Finance Communities. The Draft MTSP outlines minimum screening criteria that all CHA and non-CHA individuals applying for rental units in mixed-income/mixed-finance communities must meet. Specifically, individuals must meet a requirement in categories including, but not limited to, credit and financial standing, residential history, and employment. Although the Draft MTSP outlines the minimum criteria, developers also have the ability to include more rigorous screening requirements in their site's Tenant Selection Plan.

Residents have the right to comment on the Draft MTSP. The CHA encourages you to pick up a copy of the draft document and send in your written comments.

TO PICK UP COPIES

You can pick up a copy of the draft document from June 10 to July 9 at:

- Management Offices
- CAC and LAC Offices
- Latino Site Offices
- CHA Administrative Offices
  - 626 W. Jackson Blvd, 6th Floor (MAP)
  - 600 W. Jackson Blvd, 8th Floor (Operations)
  - 4700 S. State (Occupancy)
- CHA Website (www.thecha.org)

TO SEND IN COMMENTS

You can send written comments to the CHA's Management Analysis and Planning (MAP) Department or submit them online until July 9.**

Send written comments to:
Chicago Housing Authority
Attn: MTSP Comments
Management Analysis and Planning
626 W. Jackson Boulevard, 6th Floor
Chicago, Illinois 60661

E-mail comments to:
commentontheplan@thecha.org

*** No comments shall be accepted after 5:00 p.m. on July 9, 2004.*

TO ATTEND THE PUBLIC COMMENT HEARING

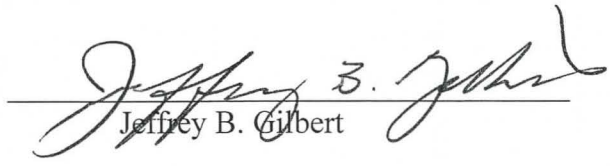
A public comment hearing will also be conducted. The public comment hearing is an opportunity for you to provide the CHA with your comments on the Draft MTSP.

Date: **Tuesday, June 29, 2004**
Time: **6:00 P.M.**
Location: **Multi-Purpose Room, Mayor's Office for People with Disabilities**
2102 W. Ogden Ave., Chicago, Illinois 60605

If you have questions, please call CHA Emergency Services at (312) 745-4700.
A staff person will be available to assist you.

CERTIFICATE OF SERVICE

Jeffrey B. Gilbert, an attorney, hereby certifies that a copy of this Reply Memorandum In Support of The Chicago Housing Authority's Motion To Reassign A Complaint Filed By Shahshak Ben Levi, And To Dismiss That Complaint, Without Prejudice To Ben Levi's Right To Seek Leave to Intervene In This Case was served upon the parties on the attached service list, by first-class, U.S. Mail, with proper postage prepaid, on June 24, 2004.



Jeffrey B. Gilbert

SERVICE LIST

Shahshak Ben Levi v. Richard M. Daley, et al..
Case No. 04 C 1169

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